

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF**

ORIGINAL
75-7039

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

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P/S

No. 75-7039

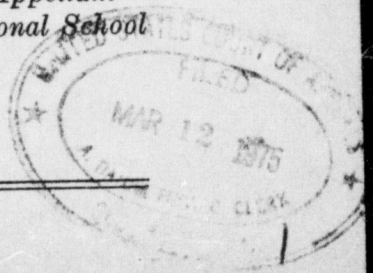
JOSEPH M. SCOTT, SR.,
Plaintiff-Appellee,
v.

NONNEWAUG REGIONAL SCHOOL DISTRICT
NO. 14, ET AL.,
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

BRIEF OF THE DEFENDANT-APPELLANT
NONNEWAUG REGIONAL SCHOOL
DISTRICT NO. 14

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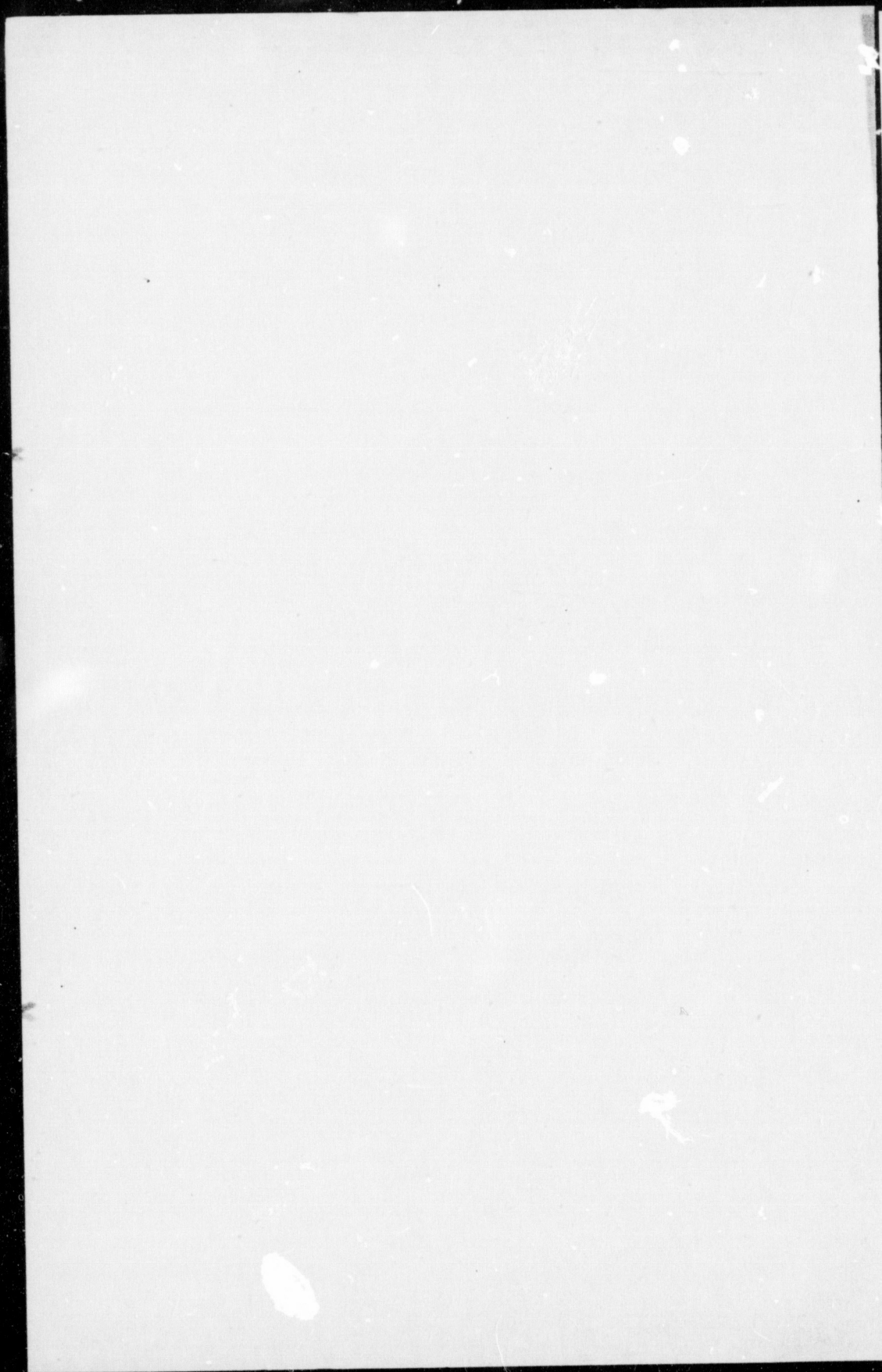


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No. 75-7039

JOSEPH M. SCOTT, SR.,

Plaintiff-Appellee,

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NONNEWAUG REGIONAL SCHOOL DISTRICT
No. 14, et al.,

Defendants-Appellants.

AN APPEAL FROM THE RULING OF THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

BRIEF OF THE DEFENDANT-APPELLANT
NONNEWAUG REGIONAL SCHOOL
DISTRICT NO. 14

Statement of the Issue

I.

Is the one-man-one-vote principle of constitutional law applicable to election of members of the Board of Education of Regional School District No. 14?

I.

Statement of the Case

Nonnewaug Regional School District No. 14 was established by separate referenda conducted in the Towns of Woodbury and Bethlehem and began operation on July 1, 1968. The district's board of education consists of eight members, four members chosen by the electors of each constituent town. According to the U.S. Bureau of the Census, U.S. Census of Population: 1970, the Town of Woodbury had a population in 1970 of five thousand eight hundred sixty nine (5,869) and the Town of Bethlehem, a population of one thousand nine hundred and twenty three (1,923). Either of the constituent towns, Bethlehem and Woodbury, which comprise Regional School District No. 14 may, pursuant to a vote of its legislative body, apply to the regional board of education to institute dissolution of the district as authorized by General Statutes Sections 10-63a - 10-63c.

Region 14 and its governing board of education function pursuant to the Connecticut General Statutes as amended, pertinent portions of which are reprinted in the Appendix to this brief. Pursuant to these statutes, the Board of Education of Regional School District No. 14 has the following duties: having charge of the regional schools; making an ongoing study of the need for school facilities and of a long term school building program and making recommendations based on such studies; responsibility for the care, maintenance and operation of the school district's buildings, lands, and other property; determining the number, age, and qualification of pupils to be admitted to the regional schools; employment and dismissal of teachers; designation of the schools which children in the region will attend; causing each child in the district to attend school in accordance with the provisions of General Statutes Section 10-184; prescribing rules for the management, studies, classification, and discipline of the public schools; prescrib-

ing textbooks to be used in regional schools subject to consent of the State Board of Education; making rules for the arrangement, use and safekeeping of the regional libraries and approving the books selected therefor; approving plans for schoolhouses and superintending schools in the manner specified by law; assuming and agreeing to pay any bonds or other capital indebtedness issued by a town for any land and buildings so purchased; performing all acts required to implement the plan of the temporary regional school study committee for the transfer of property from the two towns to the regional school district; building, adding to or equipping schools for the benefit of the towns of Woodbury and Bethlehem; receiving gifts of real and personal property for the purposes of the regional district; conducting the regional district annual meeting held on the first Monday in May of each year; and convening special regional district meetings when necessary.

On July 3, 1972, Plaintiff filed suit against Nonnewaug Regional School District No. 14, the towns of Woodbury and Bethlehem, Connecticut, Ray O. Walls, Chairman, Nonnewaug Regional School District No. 14 Board of Education, J. Lawrence Pond, First Selectman, Town of Woodbury and Samuel J. Swendsen, First Selectman, Town of Bethlehem alleging that the present apportionment of membership on the regional board of education dilutes his voting power and deprives him of equal protection of the law; and seeking a permanent injunction requiring reorganization of the Regional School District. The District Court entered summary judgment for the Plaintiff. This appeal followed.

ARGUMENT

I. The One-Man-One-Vote Principle of Constitutional Law is not Applicable to Election of Members of the Board of Education of Regional School District No. 14.

A. Summary of applicable case law.

In *Avery v. Midland County*, 390 U.S. 474 (1968), the constitutional principle of one-man-one-vote, having first been enunciated in *Baker v. Carr*, 369 U.S. 186 (1962), and extended in *Reynolds v. Sims*, 377 U.S. 533 (1964), was held applicable to "units of local government having general governmental powers over the entire geographic area served by the body." *Id.*, p. 485. The unit of local government with which *Avery* was concerned, the Midland County Commissioners Court, was found to have broad powers affecting all the citizens of the county:

It sets a tax rate, equalizes assessments, and issues bonds. It then prepares and adopts a budget for allocating the county's funds, and is given by statute a wide range of discretion in choosing the subjects on which to spend. In adopting the budget the court makes both long-term judgments about the way Midland County should develop—whether industry should be solicited, roads improved, recreation facilities built, and land set aside for schools—and immediate choices among competing needs.

Id., p. 483.

In applying the principle of one-man-one-vote, the *Avery* Court observed that the County Commissioners Court "is representative of most of the general governing bodies of American cities, counties, towns, and villages." *Id.*, at 482, and cautioned against all inclusive application of the principle:

This Court is aware of the immense pressures facing units of local government, and of the greatly varying

problems with which they must deal. The Constitution does not require that a uniform straitjacket bind citizens in devising mechanisms of local government suitable for local needs and efficient in solving local problems.

Id., at 460.

Previous to deciding *Avery*, the Court had declined to extend the one-man-one-vote principle to an area school board whose members are selected by delegates from the school boards of component districts. *Sailors v. Board of Education*, 387 U.S. 105 (1967). The *Sailors* decision rested on the administrative nature of the area school board's functions and the essentially appointive nature of the selection process. Commenting on *Sailors*, and its companion case, *Dusch v. Davis*, 387 U.S. 112 (1967), the court in *Avery* observed:

The *Sailors* and *Dusch* cases demonstrate that the Constitution and this Court are not roadblocks in the path of innovation, experiment, and development among units of local government. We will not bar what Professor Wood has called "the emergence of a new ideology and structure of public bodies, equipped with new capacities and motivations. . . ." R. Wood, 1400 Governments, at 175 (1961). Id., at 485.

This court has adopted the reasoning of *Avery* in applying the one-man-one-vote principle to the Suffolk County Board of Supervisors. In *Bianchi v. Griffin*, 393 F. 2d 457 (2d Cir. 1968) the Suffolk Board of Supervisors was found to possess "general governmental power" as the legislative and policy determining body of the county possessing "all the powers and duties of the county . . ." These included the power to levy taxes, incur debts, make appropriations and the general duty to support the operation of the county government.

Finally, in *Hadley v. Junior College District*, 397 U.S. 50 (1970), the Court employed sweeping language in apply-

ing the one-man-one-vote principle as extended by *Avery* to a Junior College District Board of Trustees with the powers to (1) hire and fire teachers, (2) make contracts, (3) collect fees, (4) supervise and discipline students, and (5) in general, manage the operations of the junior college:

We therefore hold today that as a general rule, whenever a state or local government decides to select persons by popular election to perform governmental functions, the Equal Protection Clause of the Fourteenth Amendment requires that each qualified voter must be given an equal opportunity to participate in that election, and when members of an elected body are chosen from separate districts, each district must be established on a basis that will insure, as far as is practicable, that equal numbers of voters can vote for proportionally equal numbers of officials.

Id., at 56.

Despite the broad language of its opinion, the *Hadley* Court cautioned against a tendency to apply the one-man-one-vote principle to all governmental bodies, citing its earlier opinion in *Sailors*:

As we said before, "[v]iable local governments may need many innovations—numerous combinations of old and new devices, great flexibility in municipal arrangements to meet changing urban conditions. We see nothing in the Constitution to prevent experimentation. *Sailors*, *supra*, at 110-111."

Id., at 59.

With *Salyer Land Co. v. Tulare Water District*, 410 U.S. 719 (1973) and *Associated Enterprises, Inc. v. Toltec*, 410 U.S. 743 (1973), the Supreme Court clearly limited the scope of its prior one-man-one-vote rulings. In *Salyer*, the Court scrutinized the governing board of a California Water District which has the statutory power to contract for the construction of district projects; the power to condemn private property for use in such projects; the authority to issue general obligation bonds; the power of eminent

domain; the power to employ and dismiss persons on a regular staff; the authority to plan and execute approved projects; the authority to provide for the generation and distribution of hydroelectric power; and the power to fix tolls and charges for the use of water and to collect them from persons receiving services in proportion to the services rendered. *Salyer*, at 723-724 and 728 n. 7. The officers of the district are elected by weighted vote of the district landowners.

Despite the possession of such governmental powers, the majority of the Supreme Court held that the one-man-one-vote principle does not apply:

The appellee district in this case, although vested with some typical governmental powers, has relatively limited authority. Its primary purpose, indeed the reason for its existence, is to provide for the acquisition, storage, and distribution of water for farming in the Tulare Lake Basin. It provides no other general public services, such as schools, housing, transportation, utilities, roads, or anything else of the type ordinarily financed by a municipal body. App. 86. There are no towns, shops, hospitals, or other facilities designed to improve the quality of life within the district boundaries, and it does not have a fire department, police, buses, or trains. *Ibid.*

Id., at 728-729.

The significance of the holding in *Salyer* for the body of case law applying the one-man-one-vote doctrine to local units of government is best described in the vigorous dissent of Justice Douglas. In his opinion, Justice Douglas cites the *Hadley* court's liberalization of the *Avery* test for determining whether a unit of local government has "general governmental powers over the entire geographic area served by the body," *Avery*, at 475, 485, sufficient to mandate application of the one-man-one-vote doctrine. The dissent points out that *Hadley* requires the application of the one-man-one-vote principle to California water dis-

tricts because California statutes and California courts have held that that State's water districts "are considered exclusively governmental; that their property is held only for governmental purpose," that they are public entities like "any other political subdivision," that the district directors are public officers of the state; that their works cannot be taxed; and that they enjoy governmental immunity. *Id.*, at 740.

Most recently the Supreme Court has dismissed an appeal, on jurisdictional grounds, in *Board of Education of Tri-Valley Central School District No. 1 v. Board of Cooperative Educational Services*, 37 A.D. 2d 330, 325 N.Y.S. 2d 592 (1971); affirmed, 31 NY 2d 1020, 294 NE 2d 657 (1973); appeal dismissed, 414 U.S. 992, 92 S.Ct. 344 (1973). The appellant district in that case, one of the school districts included within the area served by the respondent Board of Cooperative Services and which provided part of the financial support for said Board sought to obtain a declaration that the method of selecting members of the Board prescribed in Section 1958 of New York's Education law, and the resultant composition of the Board, contravened the one-man-one-vote principle. Each district, it was argued, should be given a proportionate share of members on the Board. The New York Court found no merit in appellant's contentions, pointing out that the Board has no power to tax but can only exercise the power to allocate expenses among the various districts which provide financial support:

As to appellant's second contention, since respondent has no power to tax, it is not subject to the one-man-one-vote rule and appellant's assertion that it is an unrepresentative body must fail (*Sailors v. Board of Education of the County of Kent*, 387 U.S. 105, 108, 109-111, 87 S.Ct. 1549, 18 L.Ed. 2d 656; see also, *Hadley v. Junior College District of Metropolitan Kansas City, Mo.*, 397 U.S. 50, 90 S.Ct. 791, 25 L.Ed. 2d 45).

Id., at 594.

It is clear that the opinion in *Salyer*, read in conjunction with the opinion of the Appellate Division of the N.Y. Supreme Court in *Tri-Valley* has rendered less general the general rule enunciated in *Hadley* at 50, 56, that "whenever a state or local government decides to select persons by popular election to perform governmental functions . . .", the one-man-one-vote principle applies.

B. The governing Board of Nonnewaug Regional School District No. 14 does not possess governmental powers sufficient to mandate application of the one-man-one-vote principle to election of its members.

An assessment of the functions of the Board of Education of Regional School District No. 14, combined with a close reading of the Supreme Court cases which have applied the one-man-one-vote rule to certain local units of government forces the conclusion that the rule is not applicable to the election of members of that board.

In Connecticut the respective powers of the school district, and its governing body, the school board, are carefully delineated and distinguished by the state statutes set forth in the appendix to this brief. General Statutes Section 10-240 provides that:

Each town shall maintain the control of all the public schools within its limits and for this purpose shall be a school district and shall have all the powers and duties of school districts, except so far as such powers and duties are inconsistent with the provisions of this chapter.

The intent of Section 10-240 was to transfer control of all the public schools within the town to the town itself, with each town constituting a separate school district. See *Keegan v. Town of Thompson*, 103 Conn. 418, 130 A. 707 (1925). *Second School District of Glastonbury*, 86 Conn. 590, 86 A. 577 (1913). General Statutes Section 10-241

provides that "[e]ach school district shall be a body corporate" with certain powers, including the power to lay taxes. Section 10-242 establishes the annual town meeting as the annual school district meeting.

The duties of the school board generally as distinct and separate from the power vested solely in the school district, are found in General Statutes Section 10-220 which provides that boards of education shall maintain in their several towns good public elementary and secondary schools and shall promote the educational interests of the State. The terms "school district" and "school board" are not used interchangeably in the statutes and while, for example, school districts in Connecticut do have the power to levy and collect taxes, it is clear that Connecticut school boards do not possess such power.

When the Connecticut legislature adopted its statutory scheme for the creation of regional school districts, the distinction between the powers possessed by the school district and those possessed by the school board was maintained and made a part of the regional school laws. Thus General Statutes Section 10-56 provides in part:

A regional school district shall be a body politic and corporate with power to sue and be sued; to purchase, receive, hold and convey real and personal property for school purposes; and to build, equip, purchase, rent, maintain or expand schools. Such district may issue bonds in the name and upon the full faith and credit of such district and the member towns to acquire land, prepare sites, purchase or erect buildings and equip the same for school purposes, if so authorized by referendum.

The powers enumerated in Section 10-56, powers which may be described as important governmental power, are vested in the regional school district, i.e., in the voters of the district. They are not possessed by the Regional School

Board. The primary function of the regional school board is to "administer" the affairs of the regional school district. In addition, while Section 10-60 of the General Statutes refers to a power to issue bonds as provided in Section 10-56, a reading of 10-56 makes clear that the power to authorize the issuance of bonds lies exclusively with the voters of the school district. Indeed, in order to borrow money at all, the regional board of education must have the authorization of a majority vote of the region's voters present at a regional district meeting called specifically for the purpose of obtaining such authorization. And while the regional board of education has the duty to prepare an estimated budget for the region, the power to adopt a budget lies exclusively with the voters at a regional school district meeting, as provided in Section 10-51. The budgetary process for regional school districts is thus similar in nature to the process in *Tri-Valley, supra*, where the court declined to apply to the one-man-one-vote principle.

The distinction Connecticut draws between the powers of the regional school district as opposed to the powers of the regional school board can be better grasped by reference to the Vermont legislative scheme which was the subject of review in *Leopold v. Young*, 340 F. Supp. 1014 (D.Vt. 1972). In applying the one-man-one-vote doctrine to election of members of the Vermont Union High School District, the court observed:

In light of Hadley and the applicable Vermont statutes, there can be no serious question but that the District school board exercises general governmental functions in the performance of its duties. The powers of the school board include the determination and administration of the educational policies of the school district *and the exercise of the broad powers given to a legislative branch of a municipality.* (Emphasis added.)

Id., at 1017.

The Vermont Union High School District Board in *Leopold* possessed duties and powers similar to those

granted to regional school boards in Connecticut. In addition, however, the Vermont School Board possessed general legislative power. 16 Vermont Stat. Ann. Sec. 563, entitled "Powers of School Boards", which is reproduced in the Appendix to this brief, includes the power to "(15) exercise the general powers given to a legislative branch of a municipality." Thus, the school board in *Leopold* possessed the powers which in Connecticut are possessed only by the regional school district. It is the regional school district in Connecticut, and not the regional school board, which exercises the general powers given to a legislative branch of a municipality. The only "legislative" powers possessed by regional school boards are the powers to prescribe rules under General Statutes Section 10-221 for the internal management, and educational policies of the school system. It is the Regional School District that performs important governmental functions which, under the Supreme Court's ruling in *Hadley*, would require the application of the one-man-one-vote doctrine to the regional school board if it performed such functions.

The limited powers of Connecticut regional school boards and the broad governmental powers vested in the voters of regional school districts are set forth in the specific state statutes printed in the appendix to this brief. These statutes evidence a legislative intent that Connecticut's traditionally autonomous towns retain control of their local schools, even upon regionalization. The vehicle for this purpose is the regional school district meeting at which the region's voters, on a one-man-one-vote basis, perform the district's important governmental functions.

Plaintiff has apparently taken the position that any elective public body whose activities may be described as "governmental" is subject to the one-man-one-vote principle, despite the holding in *Salyer*. Yet when the statutes set forth in the appendix are scrutinized, it must be concluded that regional school boards in Connecticut do not possess governmental powers or functions sufficient to

bring the one-man-one-vote rule into play. Such boards are clearly not "units of local government having general governmental powers" (*Avery*) or boards "representative of most of the general governing bodies of American cities, counties, towns, and villages" (*Avery*); nor do they perform the "important governmental functions" within the regional school district "general enough and [with] sufficient impact throughout the district" (*Hadley*) to justify application of the one-man-one-vote rule. It is in fact the regional school district, not the school board, which possess these attributes of governmental power.

In some respects, the powers of the Board of Education of Regional School District No. 14 are less pervasive, district-wide, than those possessed by the Tulare Water District, to which the one-man-one-vote principle was found inapplicable by the majority in *Salyer*. That district's board has the power to condemn private property for use in district projects. It has the authority to issue bonds. It has the power to fix tolls for water use in proportion to services rendered and to collect these tolls. *Salyer*, at 723-24, and 728, n. 7. And, as Justice Douglas pointed out in his dissent in *Salyer*, California courts have held that water districts "are considered exclusively governmental." *Id.*, at 740. And though Regional School District No. 14 functioning by and through the regional school district meeting does possess some governmental powers similar to those of the governing board of the Tulare Water District, the governing board of Regional School District No. 14, as applicable statutes make clear, does not possess such far-reaching governmental powers.

Conclusion

The Court in *Avery*, *supra*, at 484-485, held that the principle of one-man-one-vote may be qualified so as not to prevent citizens from devising mechanisms of local government to meet legitimate local needs. Regional school

districts in Connecticut meet legitimate local needs by giving towns (particularly smaller towns) the opportunity to combine resources with other towns to provide for more efficient school operation with a resultant improvement in educational programs. Regionalization is encouraged by the state through the legislative provision for a greater portion of state aid (through the "average daily membership" grant) to regional school districts as opposed to local school districts. See General Statutes Section 10-262. Under General Statutes Section 10-39, the State Board of Education is required to promulgate regulations setting standards to govern the formation of regional school districts with respect to those factors which bear on "the achievement of more efficient administration of a school district and efficacious education of the pupils therein." And although each member town is required by law to have at least one representative on the regional board of education, there can be no doubt that the otherwise unfettered discretion towns have in deciding the make-up of the board upon formation of the district greatly encourages regionalization (General Statutes Section 10-46).

Nonnewaug Regional School District No. 14 is a case in point. Each town which comprises Regional 14 has four representatives on the Board of Education. Each town therefore, in practical effect retains administrative control of its schools. The Connecticut legislature "could quite reasonably have concluded" that unless smaller towns whose consent is necessary to organize regional school districts were allowed to retain such control, regionalization would not be effectuated. See *Salyer, supra*, at 731. Of course, a mechanism of local government which has normal governmental authority cannot be comprised of officers who are elected on other than a one-man-one-vote basis even if it meets legitimate local needs. But the Board of Education of Regional School District No. 14 clearly does not have normal governmental authority

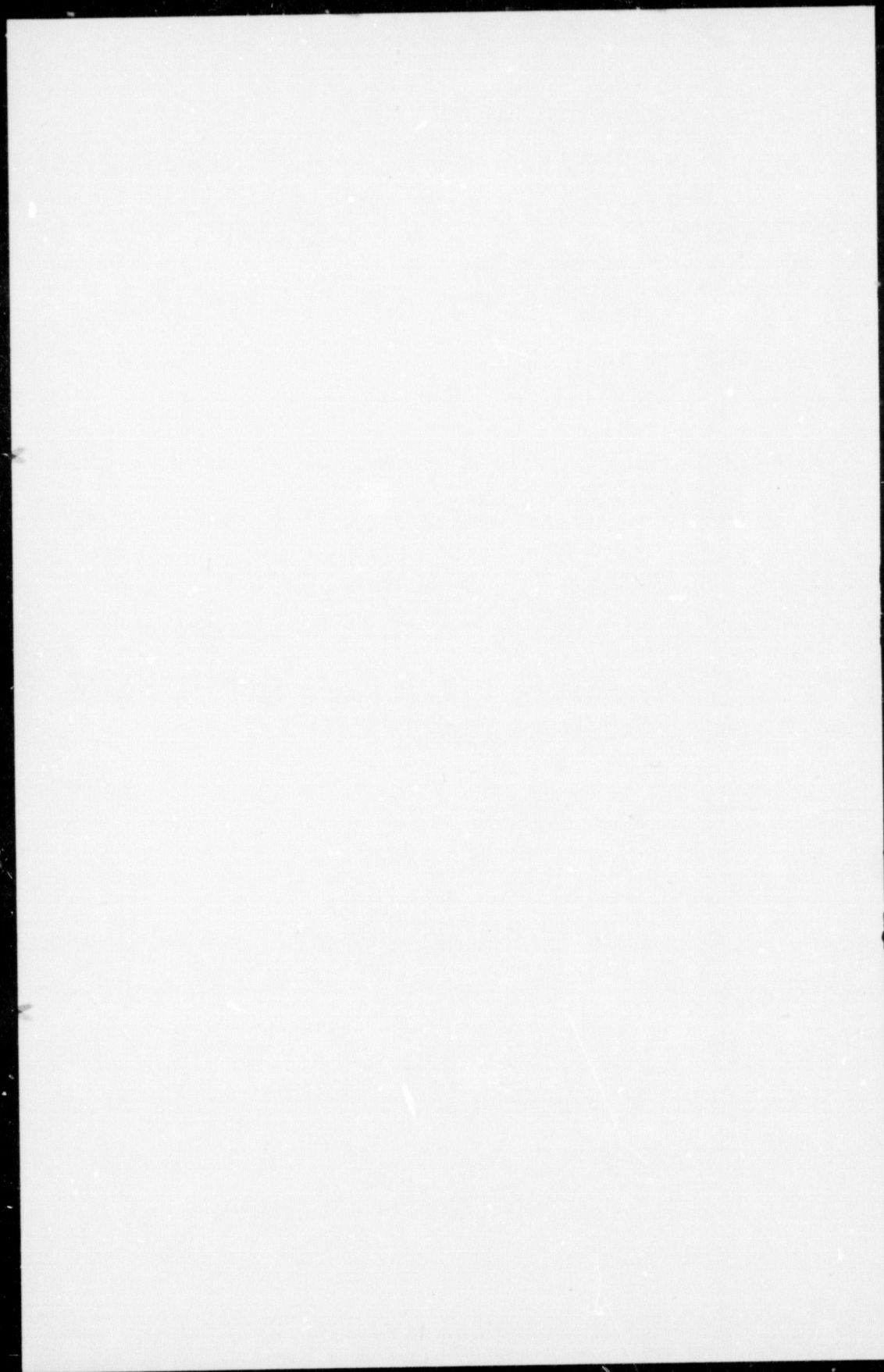
since such authority resides exclusively in the district's voters. Consequently, the one-man-one-vote principle is inapplicable to election of its members.

The decision of the District Court should be reversed.

Respectfully submitted,

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CONNECTICUT GENERAL STATUTES

§ 10-39. Temporary regional school study committee

(a) Two or more towns may establish a regional school district in accordance with the provisions of this part and the regulations promulgated thereunder. The state board of education shall promulgate regulations setting standards to govern the formation of regional district with respect to the minimum and maximum enrolment, the geographical limitations and other such factors which bear on the achievement of more efficient administration of a school district and efficacious education of the pupils therein.

(b) Two or more towns or regional school districts may, by vote of their legislative bodies, join in the establishment of a temporary regional school study committee, hereafter referred to as the committee, to study the advisability of establishing a regional school district, report to the respective towns in accordance with section 10-43. In performing its duties, such committee may employ an architect to assist in estimating the cost of providing school facilities, an appraiser to establish the value of assets of each participating school district and such other professional consultants or personnel as may be needed, provided the committee shall not incur obligations which exceed the monies received pursuant to section 10-42. The committee shall continue until dissolved pursuant to section 10-43 but no longer than two years from the date of its organization unless the legislative bodies of the participating towns vote to extend the life of the committee for a period not to exceed two years.

(c) Two or more boards of education may conduct a preliminary study of the advisability of establishing a regional school district, and if their findings are affirmative, such boards of education, except as provided below, shall submit a written report to the chief executive officer in each town served by such boards. Within thirty days of the receipt of the report, such officer shall call a meeting of the legislative body of the town which shall consider the report and vote on the question of establishing a temporary regional school study committee pursuant to subsection (b) of this section. In the case of a regional board of education, such board shall call a meeting of the regional school district for such purposes.

(d) A regional school district may participate as a region in any study undertaken pursuant to subsection (b) or (c) of this section, provided such study is for the purpose of establishing a regional school district which may provide for the proposed district all programs under the general supervision and control of the state board of education. In the case of a preliminary study, the regional board of education shall submit the written report to a regional school district meeting called to consider the report and vote on the question of joining in the establishment of a temporary regional school study committee pursuant to subsection (b) of this section. A regional school district may vote to appoint five members to a temporary regional school study committee at a regional school district meeting. Two of such members shall be members of the regional board of education. The towns which are members of such regional school district shall be "participating" towns for the purposes of notice, reports and referenda under sections 10-41 to 10-43, inclusive, and section 10-45. If a new regional school district is established by the referenda, the board of education of the regional school district which participated in the study shall be deemed a town board of education for purposes of section 10-46a.

(e) Any temporary regional school study committee established before the passage of this act shall continue its study in accordance with the procedures and mandates of this part, but shall not be required to change its membership. The provisions of section 10-42 shall apply.
(1969, P.A. 698, § 1, eff. June 24, 1969.)

*Connecticut General Statutes***§ 10-46. Regional board of education**

(a) The affairs of the regional school district shall be administered by a regional board of education, which shall consist of not fewer than five nor more than nine members. Each member town shall elect at least one member. The committee report shall determine the number of members of such regional board and the representation of each town. The first members of such regional board of education shall be nominated and elected at a meeting of the legislative body of each town held within thirty days after the referendum creating the district. The regional board of education at its first meeting, called by the secretary of the state board of education within ten days from the time the last member town to appoint members to the regional board has done so, shall organize and the members shall serve until their successors are elected and qualify. At such meeting, the board shall determine the term of office of each member according to the following principles: (1) The term of office of each successor shall be four years; (2) to establish a continuity of membership, a system of rotation shall be used; if the board has an even number of members, one-half of such number shall be elected every two years and if the board has an uneven number of members, no more than a bare majority or a bare minority shall be elected every two years, except when the unexpired portion of the term of a vacated office must be filled; (3) the same system of rotation shall be used for election of the representatives of each member town, if possible; (4) if necessary, it shall be determined by lot which of the initial members shall serve the short terms; (5) at the first election of members in accordance with subsection (b) or (c) of this section, no more than half the offices held by initial board members shall be filled; (6) the offices held by the remaining initial board members shall be filled at the second election held in accordance with subsection (b) or (c) of this section. Thereafter, members of the board shall be nominated and elected in their respective towns in accordance with subsection (b) or (c) of this section as determined by the legislative body of each town.

(b) At least thirty days before the expiration of the term of office of any board member, a town meeting shall be held in accordance with chapter 90 to nominate and elect a successor. Any person who is an elector of such town may vote at such meeting. If a vacancy occurs in the office of any member of the regional board of education, the town affected, at a town meeting called within thirty days from the beginning of such vacancy, shall nominate and elect a successor to serve for the unexpired portion of the term in accordance with the above procedure.

(c) Board members shall be nominated and elected in the same manner as town officers in accordance with the provisions of title 9 except that (1) section 9-167a and parts II and III of chapter 146 shall not apply and (2) the board members so elected shall take office the first day of the month following the elections. If a vacancy occurs in the office of any member of the regional board of education, the legislative body of the town affected shall elect a successor to serve until the next general election, at which time a successor shall be elected to serve any unexpired portion of such term.

(d) All members of a regional board of education shall take office on the first day of the month following their election. Such board shall hold an organizational meeting in the month following the last election of members thereof held in the member towns in any calendar year at which time the board shall elect by ballot from its membership a chairman, a secretary, a treasurer and any other officer deemed necessary and may annually thereafter elect such officers. In the case of a tie vote in the balloting for any officer, such tie shall be broken by lot. The treasurer shall give bond to the regional board of education in an amount determined by the members thereof. The cost of such bond shall be borne by the district.

(1967, P.A. 333, § 1, eff. June 8, 1967; 1969, P.A. 698, § 8, eff. June 24, 1969; 1971, P.A. 679, § 1, eff. July 6, 1971.)

*Connecticut General Statutes***§ 10-47. Powers of regional board**

Regional boards of education shall have all the powers and duties conferred upon boards of education by the general statutes not inconsistent with the provisions of this part. Such boards may purchase, lease or rent property for school purposes and, as part of the purchase price may assume and agree to pay any bonds or other capital indebtedness issued by a town for any land and buildings so purchased; shall perform all acts required to implement the plan of the committee for the transfer of property from the participating towns to the regional school district and may build, add to or equip schools for the benefit of the towns comprising the district. Such boards may receive gifts of real and personal property for the purposes of the regional school districts. The regional school district annual meeting shall be the district meeting at which the annual budget is first presented for adoption and shall be held the first Monday or the first Tuesday in May. The boards may convene special district meetings when they deem it necessary. District meetings shall be warned and conducted in the same manner as are town meetings. For such purposes, the chairman of the board shall have the duties of the board of selectmen and the secretary shall have the duties of the town clerk. (1967, P.A. 113, § 1, eff. May 23, 1967; 1969, P.A. 608, § 10, eff. June 24, 1969; 1973, P.A. 73-539.)

§ 10-51. Fiscal year. Budget. Payments by member towns. Investment of funds. Temporary borrowing

(a) The fiscal year of a regional school district shall be July first to June thirtieth. Except as otherwise provided in this subsection, not less than two weeks before the annual meeting held pursuant to section 10-47, the board shall hold a public district meeting to present a proposed budget for the next fiscal year. Any person may recommend the inclusion or deletion of expenditures at such time. After the public hearing, the board shall prepare an annual budget for the next fiscal year, make available on request copies thereof and deliver a reasonable number to the town clerk of each of the towns in the district at least five days before the annual meeting. At the annual meeting on the first Monday in May, the board shall present a budget which includes a statement of (1) estimated receipts and expenditures for the next fiscal year, (2) estimated receipts and expenditures for the current fiscal year, (3) estimated surplus or deficit in operating funds at the end of the current fiscal year, (4) bonded or other debt, (5) estimated per pupil expenditure for the current and for the next fiscal year and (6) such other information as is necessary in the opinion of the board. Persons present and eligible to vote under section 7-6 may accept or reject the proposed budget except as provided below. No person who is eligible to vote in more than one town in the regional school district is eligible to cast more than one vote on any issue considered at a regional school district meeting or referendum held pursuant to this section. Any person who violates this section by fraudulently casting more than one vote or ballot per issue shall be fined not less than three hundred dollars nor more than five hundred dollars and shall be imprisoned not less than one year nor more than two years and shall be disenfranchised. If the regional school district is comprised of four or more towns, the regional board of education may, in the call to the meeting, designate that the vote on the motion to adopt the budget shall be by paper ballots or by a "yes" or "no" vote on the voting machines in each of the member towns on the day following the district meeting. Two hundred or more persons qualified to vote in any regional district meeting called to adopt a budget may petition the re-

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gional board, in writing, at least three days prior to such meeting, requesting that any item or items on the call of such meeting, be submitted to the persons qualified to vote in the meeting for a vote by paper ballot or on the voting machines in each of the member towns on the day following the district meeting and in accordance with the appropriate procedures provided in section 7-7. If a majority of the persons voting reject the budget, the board shall, within two weeks thereafter and upon notice of not less than one week, call a district meeting to consider the same or an amended budget. Such meetings shall be convened at such intervals until a budget is approved. After the budget is approved, the board shall estimate the share of the net expenses to be paid by each member town in accordance with subsection (b) of this section and notify the treasurer thereof. With respect to adoption of a budget for the period from the organization of the board to the beginning of the first full fiscal year, the board may use the above procedure at any time within such period. If the board needs to submit a supplementary budget, the general procedure specified in this section shall be used.

(b) For the purposes of this section, "net expenses" means estimated expenditures less estimated receipts as presented in a regional school district budget. On the date or dates fixed by the board, each town in the district shall pay a share of the cost of capital outlay and current expenditures necessary for the operation of the district. The board shall determine the amount to be paid by each member town. Such amount shall bear the same ratio to the net expenses of the district as the number of pupils resident in such town in average daily membership in the regional school district during the preceding school year bears to the total number of such pupils in all the member towns. Until the regional school district has been in operation for one year, such amounts shall be based on the average daily membership of pupils in like grade from each of such towns at any school at which children were in attendance at the expense of such towns during the preceding school year.

(c) The board shall deposit or invest temporarily any funds which are not needed immediately for the operation of the school district in any manner permitted school districts or municipalities in chapter 112. Any income derived from such deposits or investments shall be used at least semiannually to reduce the net expenses. The board shall use any budget appropriation which has not been expended by the end of the fiscal year to reduce the net expenses of the district for the following fiscal year. The board may borrow funds temporarily in anticipation of payments to be made to it by a member town or the state, for the operation of its schools.

(1969, P.A. 698, § 13, eff. June 24, 1969; 1971, P.A. 679, §§ 3, 4, eff. July 6, 1971.)

§ 10-53. Application of education statutes

All provisions of the general statutes relating to public education, including those providing state grants-in-aid, shall apply to each town belonging to a regional school district, provided, if the board of education of any regional school district provides transportation to a regional school, such district shall be reimbursed by the state as provided in section 10-54. Any regional school district empowered to provide to the member towns all programs under the general supervision and control of the state board of education shall receive each year in addition to the amount of state aid under section 10-262 ten per cent of said amount.

(1967, P.A. 473, § 1, eff. July 1, 1968; 1969, P.A. 698, § 14, eff. June 24, 1969.)

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§ 10-56. Corporate powers. Bonds issues

(a) A regional school district shall be a body politic and corporate with power to sue and be sued; to purchase, receive, hold and convey real and personal property for school purposes; and to build, equip, purchase, rent, maintain or expand schools. Such district may issue bonds in the name and upon the full faith and credit of such district and the member towns to acquire land, prepare sites, purchase or erect buildings and equip the same for school purposes, if so authorized by referendum. Such referendum shall be conducted in accordance with the procedure provided in section 10-47c except that any person entitled to vote under section 7-6 may vote and the question shall be determined by the majority of those persons voting in the regional school district as a whole. A regional board of education may expend any premium in connection with such issue, interest on the proceeds of such issue or unused portion of such issue to add to the land or buildings erected or purchased and for the purchasing and installing of equipment for the same. Such bonds shall be denominated "Bonds of regional school district number . . . of the State of Connecticut." Such bonds shall be serial bonds, with coupons attached, and registerable as to principal and interest or as to principal alone, shall be signed by the chairman and the treasurer of the regional board of education and shall bear such rate of interest, mature in such substantially equal instalments and be issued in such denominations and at such times and places as shall be determined by such board. The first instalment of any series of bonds shall mature not later than two years from the date of the issue of such series and the last instalment of such series shall mature not later than twenty years therefrom. Such bonds, when executed, issued and delivered, shall be general obligations of such district and the member towns, according to their terms. Any regional school district which has issued any bonds or other obligations pursuant to any general statute or special act may redeem them by issuing new bonds or other obligations.

(b) "Annual receipts from taxation" means the receipts from taxation of the member towns for the fiscal year next preceding the close of the last fiscal year of such regional school district. Notwithstanding the provisions of section 7-374, any regional school district may assume bonds or other indebtedness of any member town as part of the purchase price of any property for school purposes or issue bonds or notes, provided the aggregate indebtedness of such district shall not exceed: (1) In the case of a regional school district serving the same towns as are served by two or more town school districts, two and one-quarter times the annual receipts from taxation or (2) in the case of a regional school district empowered to provide for the member towns all programs under the general supervision and control of the state board of education, four and one-half times such annual receipts from taxation. Any regional school district may issue additional bonds or notes in an amount not to exceed three and one-half times such annual receipts from taxation less the aggregate indebtedness as defined in section 7-374 for the member towns of such district.

(c) When a district has been authorized to issue general obligation bonds as provided by this section, the board may authorize, for a period not to exceed four years, the issue of temporary notes in anticipation of the receipt of the proceeds from the sale of such bonds. Notes issued for a shorter period of time may be renewed by the issue of other notes, provided the period from the date of the original notes to the maturity of the last notes issued in renewal thereof shall not exceed four years. The term of such notes shall not be included in computing the time within which such bonds shall mature. The provisions of section 7-373 shall be deemed to apply to such notes. The board shall determine the date, maturity, interest rate, form, manner of sale and other terms of such notes which shall be general obligations of the regional school district and member towns. Such notes may bear interest or be sold

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at a discount. The interest or discount on such notes and any renewals thereof and the expense of preparing, issuing and marketing them may be included as a part of the cost of the project for the financing of which such bonds were authorized. Upon the sale of such bonds, the board shall apply immediately the proceeds thereof, to the extent required, to the payment of the principal and interest of all notes issued in anticipation thereof or deposit the proceeds in trust for such purpose with a bank or trust company, which may be the bank or trust company, if any, at which such notes are payable.

(d) Subject to the provisions of subsection (c) of this section, the board may deposit or invest the proceeds of bonds or of notes issued in anticipation thereof in the same manner and to the same extent as permitted school districts or municipalities in chapter 112.

(1967, P.A. 626, § 2, eff. June 21, 1967; 1967, P.A. 674, eff. Oct. 1, 1967; 1969, P.A. 132, § 2, eff. May 14, 1969; 1969, P.A. 698, § 16, eff. June 24, 1969.)

§ 10-60. Borrowing in addition to bonds

In addition to the power to issue bonds as provided by section 10-56, such regional board of education may, when so authorized by a majority vote at a regional school district meeting called for such purpose, borrow sums of money in an amount which shall not exceed in the aggregate two hundred thousand dollars for a period not to exceed five years and pay interest thereon for acquiring lands, securing the services of architects and professional consultants, the operation and maintenance of regional schools, the installation of equipment therein and contingent or other necessary expenses connected therewith. Persons eligible to vote under the provisions of section 7-6 may vote on such issue. Such loans shall be in the name of and shall be general obligations of such district and the member towns. The chairman and treasurer of the board shall sign the note evidencing any such loan.

(1969, P.A. 290, § 1, eff. May 28, 1969; 1969, P.A. 698, § 17, eff. June 24, 1969.)

§ 10-63a. Vote for withdrawal of town or dissolution of district

(a) Any town which is a member of a regional school district may, pursuant to a vote of its legislative body, apply to the regional board of education to institute procedure for withdrawal from the district or, in the case of a district composed of two towns, dissolution of the district as hereinafter provided.

(b) Any two or more towns which are members of a regional school district composed of three or more towns may, pursuant to a vote of the legislative bodies of the respective towns, apply to the regional board of education to institute procedure for the dissolution of the district as hereinafter provided.

(1969, P.A. 698, § 18, eff. June 24, 1969.)

*Connecticut General Statutes***§ 10-63b. Committee to determine conditions of withdrawal or dissolution**

Within thirty days of receipt of an application pursuant to section 10-63a, the regional board of education shall call for the appointment of a committee to determine whether and under what conditions such withdrawal or dissolution shall take place. The committee shall consist of the following: One member of the board of education of each town within the district, to be selected by each such board, if any, or if none, an elector to be elected by the legislative body in such town; one member of the board of finance or comparable fiscal body of each town within the district to be selected by each such board or body; two members of the regional board of education, to be selected by such board, no more than one of whom may be a resident of a town making the application for the appointment of the committee; one member to be appointed by the state board of education, who shall not be a resident of any town within the district; the state treasurer or his designee, and one member to be appointed by the regional board of education, who shall be an expert in municipal bonding and financing and who shall not be a resident of any town within the district. The members shall receive no compensation for their services, but their expenses and those incurred by the regional board in connection with withdrawal or dissolution procedures shall be paid by the towns applying for withdrawal or dissolution. The appointee of the state board of education shall call the first meeting of the committee, and the committee shall organize and function in accordance with section 10-41.

(1969, P.A. 698, § 19, eff. June 24, 1969.)

§ 10-63c. Report of committee

Within one year after its appointment, the committee shall prepare a written report of its recommendation concerning the advisability of a withdrawal or dissolution. If the committee recommends a withdrawal or dissolution, the report shall include: (1) A determination of the value of the net assets of the regional district, (2) an apportionment of the net assets to each member town on the basis of the ratio which the total average daily membership of such town since its membership in the regional district bears to the total average daily membership reported to the state board of education by the regional board of education up to and including the last such report, (3) a plan for settlement of any obligations and the transfer of property from the regional school district to the member town school districts, (4) a timetable for the orderly withdrawal or dissolution of the regional district and establishment of town boards of education if none exist, (5) the question to be determined by the referendum and (6) such other matters as the committee deems necessary. The provisions of sections 10-43 and 10-45, except as provided below, shall apply to the procedures for submission of the plan to the state board of education, action by such board, presentation of such plan to the member towns, action by such towns and the dissolution of the committee. The establishment of any new town board of education shall be in accordance with chapter 146. Upon an affirmative vote in each member town, the regional board of education and member towns shall cooperatively implement the plan for dissolution or withdrawal of a member town.

(1969, P.A. 698, § 20, eff. June 24, 1969.)

*Connecticut General Statutes***§ 10-184. Duties of parents**

All parents and those who have the care of children shall bring them up in some lawful and honest employment and instruct them or cause them to be instructed in reading, writing, spelling, English grammar, geography, arithmetic and United States history and in citizenship, including a study of the town, state and federal governments. Each parent or other person having control of a child over seven and under sixteen years of age shall cause such child to attend a public day school regularly during the hours and terms the public school in the district wherein such child resides is in session, or while the school is in session in which provision for the instruction of such child is made according to law, unless the parent or person having control of such child is able to show that the child is elsewhere receiving equivalent instruction in the studies taught in the public schools. Children over fourteen years of age shall not be subject to the requirements of this section while lawfully employed at labor at home or elsewhere; but this provision shall not permit such children to be irregular in attendance at school while they are enrolled as pupils nor exempt any child who is enrolled as a member of a school from any rule concerning irregularity of attendance enacted by the board of education having control of the school. (1949 Rev., § 1445; 1959, P.A. 198, § 1.)

*Connecticut General Statutes***§ 10-220. Duties of boards of education**

Boards of education shall maintain in their several towns good public elementary and secondary schools, implement the educational interests of the state as defined in section 10-4a, and provide such other educational activities as in their judgment will best serve the interests of the town; provided any board of education may secure such opportunities in another town in accordance with provisions of the general statutes and shall give all the children of the town as nearly equal advantages as may be practicable; shall have charge of the schools of their respective towns; shall make a continuing study of the need for school facilities and of a long-term school building program and from time to time make recommendations based on such study to the town; shall have the care, maintenance and operation of buildings, lands, apparatus and other property used for school purposes; shall determine the number, age and qualifications of the pupils to be admitted into each school; shall employ and dismiss the teachers of the schools of such towns subject to the provisions of sections 10-151 and 10-158a; shall designate the schools which shall be attended by the various children within their several towns; shall make such provisions as will enable each child of school age, residing in the town, who is of suitable mental and physical condition, to attend some public day school for the period required by law and provide for the transportation of children wherever transportation is reasonable and desirable, and for such purpose may make contracts covering periods of not more than five years; may arrange with the board of education of an adjacent town for the instruction therein of such children as can attend school in such adjacent town more conveniently; shall cause each child between the ages of seven and sixteen living in the town to attend school in accordance with the provisions of section 10-184, and shall perform all acts required of them by the town or necessary to carry into effect the powers and duties imposed upon them by law.

(1969, P.A. 690, § 4, eff. July 1, 1969.)

§ 10-221. Boards of education to prescribe rules

Boards of education shall prescribe rules for the management, studies, classification and discipline of the public schools and, subject to the control of the state board of education, the textbooks to be used; shall make rules for the arrangement, use and safe-keeping, within their respective jurisdictions, of the school libraries and approve the books selected therefor, and shall approve plans for schoolhouses and superintend any high or graded school in the manner specified in this title. (1949 Rev., § 1479.)

*Connecticut General Statutes***§ 10-240. Control of schools**

Each town shall maintain the control of all the public schools within its limits and for this purpose shall be a school district and shall have all the powers and duties of school districts, except so far as such powers and duties are inconsistent with the provisions of this chapter. (1949 Rev., § 1497.)

§ 10-241. Powers of school districts

Each school district shall be a body corporate and shall have power to sue and be sued; to purchase, receive, hold and convey real and personal property for school purposes; to build, equip, purchase and rent schoolhouses and make major repairs thereto and to supply them with fuel, furniture and other appendages and accommodations; to establish and maintain schools of different grades; to establish and maintain a school library; to lay taxes and to borrow money for the purposes herein set forth; to make agreements and regulations for the establishing and conducting of schools not inconsistent with the regulations of the town having jurisdiction of the schools in such district; and to employ teachers, in accordance with the provisions of section 10-151, and pay their salaries. When such board appoints a superintendent, such superintendent may, with the approval of such board, employ the teachers. (1949 Rev., §§ 1498, 1507; 1953, Supp. § 955d.)

§ 10-241a. Taking of site by eminent domain

Any town or regional school district may take, by eminent domain, land which has been fixed upon as a site, or addition to a site, of a public school house, and which is necessary for such purpose or for outbuildings or convenient accommodations for its schools, upon paying to the owner just compensation, provided such taking is with the approval of the legislative body of the town, and in the case of regional school districts, subject to the provisions of section 10-49, and in each case in accordance with the provisions of sections 8-129 to 8-133, inclusive. The board, committee or public officer empowered to acquire school sites in such school district shall perform all duties and have all rights prescribed for the redevelopment agency in said sections with respect to such taking. No school district, city or town shall take for school purposes the land of any ecclesiastical society, upon any part of which a church building has already been erected, without the consent of such ecclesiastical society, or any land devoted to or used for cemetery or burial purposes.

(1967, P.A. 720, § 1, eff. July 1, 1967.)

Law Review Commentaries
Condemnation. Abraham D. Slavitt.
(March 1969) 43 Conn. Bar J. 89.

Library references
Eminent Domain § 40.
C.J.S. Eminent Domain § 62.

*Connecticut General Statutes***§ 10-242. Meetings**

The annual town meeting shall be the annual school district meeting and special meetings shall be called and held in the same manner as provided by law for special town meetings. (1949 Rev., §§ 1499, 1539.)

§ 10-262. Amounts payable to towns

During each school year each town or school district maintaining schools according to law during the preceding school year shall be paid by the comptroller, upon the certification of the secretary of the state board of education, two hundred fifteen dollars per pupil in average daily membership. (1967, P.A. 580, § 1, eff. July 1, 1967; 1969, P.A. 604, § 1, eff. July 1, 1969; 1971, June Sp.Sess., Sp.Act 1, § 13, eff. July 1, 1971; 1972, Sp.Act 53, § 11, eff. July 1, 1972.)

VERMONT GENERAL STATUTES
Annotated 1974 Sec. 563

§ 563. Powers of school boards

The school board of a school district, in addition to other duties specifically assigned by law, shall:

(1) Determine the educational policies of the school district, and prescribe rules and regulations for the conduct and management of the public schools in the district. Such rules and regulations shall be of general application to the district, shall be in writing, codified, and made available to the public.

(2) Have the power to take any action, which is required for the sound administration of the school district. The commissioner, with the advice of the attorney general, upon application of a school board, shall decide whether any action contemplated or taken by a school board under this subsection is required for the sound administration of the district and is proper under this subsection. His decision shall be final.

(3) Subject to the authority vested in the electorate or any school district official, have the possession, care, control and management of the property of the school district.

(4) Adopt regulations at a regularly scheduled school board meeting, after notice of the board's intent to do so published in the manner required for a school district meeting, stating the substance of the proposed regulations.

(5) Keep the school buildings and grounds in good repair, suitably equipped, insured and in safe and sanitary condition at all times.

(6) Have discretion to furnish more than twelve years of instruction to pupils in worthy and deserving cases.

(7) May relocate or discontinue use of a schoolhouse or facility, subject to the provisions of section 821 and section 822 of this title.

(8) Examine claims against the district for school expenses and draw orders for such as shall be allowed by it payable to the party entitled thereto. Such orders shall state definitely the purpose for which they are drawn. However, it shall be lawful for a school board to submit to its treasurer a certified copy of those portions of the board minutes, properly signed by the clerk and chairman, or a majority of the board, showing all bills approved for payment by the board and clearly showing to whom, and for what purpose each payment is to be made by the treasurer, and such certified copy shall serve as full authority to the treasurer to make the payments as thus approved. Nothing contained in this subsection shall preclude the use of a voucher system, or any other system of sound accounting and business procedure, provided that such system reflects the facts, and that the same is in accordance with regulations prescribed by or approved by the state board.

Vermont General Statutes

(9) Establish with the advice and consent of the auditor of accounts and the commissioner, a system of accounts for the proper control of school district finances and for stating the annual financial condition of the school district.

(10) Not less than fifteen days prior to the district's annual meeting, prepare and distribute to the electorate a report of the conditions and needs of the district school system, including the superintendent's and treasurer's annual report, for the previous school year, and an auditor's report prepared pursuant to section 1683 of Title 24.

(11) Annually prepare and include in the annual report a budget for the next school year according to such major categories as may from time to time be prescribed by the commissioner.

(12) Upon prior recommendation by the superintendent employ and dismiss such persons as may be required to carry out the work of the school district.

(13) Annually, on or before August 5, prepare a report for the school district containing, on forms prescribed and furnished by the commissioner, a classified statement under oath of the actual cash expenditures of the school district for the preceding school year for school purposes, and such other information as the commissioner prescribes. Such report shall be prepared in triplicate, one copy shall be retained by the superintendent, and one copy shall be sent to the school district clerk and the other sent to the commissioner on or before August 15. A district shall not be entitled to receive any portion of school money distributed by the state unless such returns are made.

(14) Provide, at the expense of the district, subject to the approval of the superintendent, all text books, learning materials, equipment and supplies.

(15) Exercise the general powers given to a legislative branch of a municipality.

(16) By its chairman, or any person designated by him whose appointment is recorded in the minutes of the board, execute contracts on behalf of the school district.

(17) Upon authorization by the electorate, employ a public accountant to audit the financial affairs of the school district and prepare the annual financial report. If a public accountant is employed, his report shall be included in the annual report.

(18) [Repealed.]—Added 1969, No. 298 (Adj. Sess.), § 40, eff. July 1, 1970; amended 1971, No. 200 (Adj. Sess.).

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JOSEPH M. SCOTT, SR.,

Plaintiff-Appellee,

against

NONNEWAUG REGIONAL SCHOOL
DISTRICT NO. 14, ET AL.,

Defendants-Appellants.

State of New York,
County of New York,
City of New York—ss.:

DAVID F. WILSON

being duly sworn, deposes

and says that he is over the age of 18 years. That on the 12th
day of March, 1975, he served two copies of the
Brief of Appellant Nonnewaug Regional School District
District No. 14 on (See attached list) ~~xxx~~

the attorney for ~~the~~ See attached list
by depositing the same, properly enclosed in a securely sealed
post-paid wrapper, in a Branch Post Office regularly maintained
by the Government of the United States at 90 Church Street, Borough
of Manhattan, City of New York, directed to said attorneys at
No. See attached list () N. Y.,
that being the address designated by them for that purpose upon
the preceding papers in this action.

David F. Wilson

Sworn to before me this

12th day of March, 1975.

Courtney Brown
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Notary Public, State of New York
No. 31-5472920
Qualified in New York County
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